

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 16cr265 (LMB)
)	
)	
NICHOLAS YOUNG,)	
)	
Defendant.)	
)	

**DECLARATION OF NICHOLAS D. SMITH IN SUPPORT OF NICHOLAS YOUNG’S
MOTION TO SUPPRESS FISA EVIDENCE**

I, NICHOLAS D. SMITH, an attorney duly admitted to practice *pro hac vice* before this Court, hereby declare under penalty of perjury that the following is true and correct:

1. I am a partner in the law firm of David B. Smith PLLC, attorneys for defendant Nicholas Young, and a member of the bars of the State of New York, of Virginia, and of Washington, D.C. I respectfully submit this declaration in support of Mr. Young’s motion to suppress FISA evidence.

2. During a recent conference call, Assistant United States Attorney Gordon Kromberg informed me, and co-counsel David Smith, that he did not intend to use electronic surveillance obtained through the FISA as evidence at trial.

3. Following the pretrial status conference on January 27, 2017, AUSA Kromberg advised that he may use FISA-based electronic surveillance for purposes other than his case-in-chief, such as impeachment. In addition, also following the status conference, the FBI’s lead case agent for this matter advised that the government may use certain Facebook evidence in its

case-in-chief. Accordingly, AUSA Kromberg advised defense counsel to proceed with a motion to suppress the FISA electronic surveillance.

Executed in New York, New York on January 31, 2017.

Respectfully submitted,

/s/ Nicholas D. Smith
Nicholas D. Smith